Cite as 2010 Ark. App. 180

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA09-1060

	Opinion Delivered February 24, 2010
JAMES MASON and ROBERT GARCIA APPELLANTS	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. CV-08-4807]
V.	HONORABLE ELLEN B. BRANTLEY, JUDGE
CHENAL COUNTRY CLUB APPELLEE	AFFIRMED

JOSEPHINE LINKER HART, Judge

Appellants, James Mason and Robert Garcia, contend that the circuit court erred when it granted summary judgment to appellee, Chenal Country Club (Chenal), in appellants' cause of action asserting that Chenal was liable under Arkansas's version of the dram-shop statute. Specifically, Mason and Garcia argue that Chenal knowingly sold alcohol to a clearly intoxicated person when it provided two open bottles of wine to ten guests for them to serve themselves on an unlimited basis and that Chenal failed to "notice" a clearly intoxicated person who over-served himself. We hold that the circuit court properly found that Chenal was entitled to summary judgment as a matter of law.

Mason and Garcia filed a complaint alleging that on February 24, 2008, at approximately 10:48 p.m., Christopher Wilks was driving a 2006 Dodge Stratus at a high rate

of speed and in the wrong direction on Chenal Parkway. Mason and Garcia were traveling on Chenal Parkway when their vehicle was struck head-on by Wilks. The complaint further alleged that Wilks admitted to drinking alcohol at a party at Chenal, and a blood sample taken from Wilks shortly after the collision showed that Wilks had a blood-alcohol level of .16. The complaint asserted that Wilks's driving while intoxicated was the proximate cause of the collision, which caused injuries to Mason and Garcia. The complaint further alleged that the bartenders at Chenal sold alcoholic beverages to Wilks when they knew or should have known that Wilks was clearly intoxicated. The complaint also asserted that the bartenders were agents or employees of Chenal, so that Chenal was vicariously liable for the negligent acts of the bartenders.

On Chenal's motion, the circuit court granted summary judgment to Chenal. In a letter, the circuit court noted that the event at Chenal—an "Oscar Night Party"—was a fundraiser for the Wolfe Street Foundation (Foundation), and tickets were $125 each. Wilks ordered one of these tickets from the Foundation. The Foundation agreed to pay Chenal $50 per person. Chenal donated two bottles of wine for each table of ten persons for no additional charge. The court also noted that Wilks did not purchase drinks from the cash bar, but instead served himself several glasses of wine from the bottles placed on his table. In its order granting summary judgment, the circuit court found that Chenal "did not knowingly sell alcoholic beverages to a clearly intoxicated person as required under the Arkansas Dram

Shop Act."

As noted above, Mason and Garcia argue that Chenal knowingly sold alcohol to a clearly intoxicated person when it provided two open bottles of wine to ten guests for them to serve themselves on an unlimited basis and that Chenal failed to "notice" a clearly intoxicated person who over-served himself. The relevant statute provides in part as follows:

> In cases where it has been proven that an alcoholic beverage retailer knowingly sold alcoholic beverages to a person who was clearly intoxicated at the time of such sale or sold under circumstances where the retailer reasonably should have known the person was clearly intoxicated at the time of the sale, a civil jury may determine whether or not the sale constitutes a proximate cause of any subsequent injury to other persons.

Ark. Code Ann. § 16-126-104 (Repl. 2006). This action is one of statutory creation and in derogation of or at variance with the common law, *see Archer v. Sigma Tau Gamma Alpha Epsilson, Inc.*, 2010 Ark. 8, ___ S.W.3d ___, and consequently, we construe the statute strictly. *See, e.g.*, *Recinos v. Zelk*, 369 Ark. 7, 250 S.W.3d 221 (2007). When interpreting the language in a statute, we give effect to the intent of the legislature, and where the language of a statute is plain and unambiguous, we determine legislative intent from the ordinary meaning of the language used. *Archer*, *supra*.

While Mason and Garcia look to case law from other states, the title of the act, and various state regulations, to interpret the statute, we conclude that the statute is, by its terms, unambiguous. The term "sale" is unambiguous and is clearly defined under our statutes relating to the sale of goods. Under those provisions, a "'sale' consists in the passing of title

from the seller to the buyer for a price." Ark. Code Ann. § 4-2-106(1) (Repl. 2001). Here, there was no such arrangement between Wilks and Chenal, as they were not positioned as buyer and seller to each other, so Chenal did not sell alcoholic beverages to Wilks.

Further, we note that, unless otherwise agreed, "where delivery is to be made without moving the goods . . . if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting." Ark. Code Ann. § 4-2-401(3)(b) (Supp. 2009). Also, unless otherwise agreed, "title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods. " Ark. Code Ann. § 4-2-401(2). Applying these statutes, if it were assumed that Chenal "sold" alcoholic beverages to Wilks by Wilks purchasing a ticket from the Foundation to attend a party at Chenal, there is nevertheless not any evidence that Wilks was clearly intoxicated at the time it was "sold"—either when Wilks obtained the ticket or, alternatively, when the two donated bottles of wine were delivered at each table of ten persons.

The statute speaks of an alcoholic beverage retailer knowingly selling alcoholic beverages to a clearly intoxicated person. To interpret the statute to create a cause of action where there was no buyer-seller relationship, where the person was one in a group of ten persons provided with two bottles of wine, and where there is no evidence that the person was intoxicated at the time the wine was provided or when the ticket was sold, would be to

pass beyond the limitations of the statute and would constitute a policy decision. Matters of public policy, however, are generally within the purview of the legislature. *Archer*, *supra*.

When a party cannot present proof on an essential element of his or her claim, there is no remaining genuine issue of material fact, and the party moving for a summary judgment is entitled to judgment as a matter of law. *See, e.g.*, *Sundeen v. Kroger*, 355 Ark. 138, 133 S.W.3d 393 (2003). Accordingly, we affirm the circuit court's granting of summary judgment to Chenal.

Affirmed.

GLADWIN and BROWN, JJ., agree.